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6 **BEFORE THE**
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. PT 2006-1016

11 **DANA KAY MCDOWELL**

DEFAULT DECISION AND ORDER

12 **1123 W. Santa Ana**

13 **Fresno, CA 90630**

14 **Psychiatric Technician License No. PT**
15 **28252**

[Gov. Code, §11520]

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about November 5, 2010, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N.,
19 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
20 Psychiatric Technicians, Department of Consumer Affairs, filed Accusation No. PT 2006-1016
21 against Dana Kay McDowell (Respondent) before the Board of Vocational Nursing and
22 Psychiatric Technicians. A copy of the Accusation is attached as exhibit A, and is incorporated
23 herein by reference.

24 2. On or about August 25, 1992, the Board of Vocational Nursing and Psychiatric
25 Technicians (Board) issued Psychiatric Technician License No. PT 28252 to Respondent. The
26 Psychiatric Technician License was in full force and effect at all times relevant to the charges
27 brought herein and expired on October 31, 2009, and has not been renewed. This lapse in
28 licensure, however, pursuant to Business and Professions Code section 118(b) and/or agency-
specific statute does not deprive the [Board] of its authority to institute or continue this
disciplinary proceeding.

1 3. On or about November 5, 2010, Respondent was served by Certified Mail copies of
2 Accusation No. PT 2006-1016, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 136
5 and/or agency specific statute or regulation, is required to be reported and maintained with the
6 Board, which was and is 1123 W. Santa Ana, Fresno, CA 90630.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about November 6, 2010, the aforementioned documents were received at the
11 address of record. A copy of the Domestic Return Receipt is attached as exhibit B, and is
12 incorporated herein by reference.

13 6. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
 may nevertheless grant a hearing.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
18 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. PT
19 2006-1016.

20 8. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the
22 hearing, the agency may take action based upon the respondent's express admissions
23 or upon other evidence and affidavits may be used as evidence without any notice to
 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter.
27 as well as taking official notice of all the investigatory reports, exhibits and statements contained
28 therein on file at the Board's offices regarding the allegations contained in Accusation No. PT

1 2006-1016, finds that the charges and allegations in Accusation No. PT 2006-1016. are separately
2 and severally true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$11,454.25 as of December 2, 2010.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Dana Kay McDowell has
8 subjected her Psychiatric Technician License No. PT 28252 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke
11 Respondent's Psychiatric Technician License based upon the following violations alleged in the
12 Accusation which are supported by the evidence contained in the Default Decision Investigatory
13 Evidence Packet in this case.:

14 a. Respondent is subject to disciplinary action under section 4521 subdivision (a), for
15 unprofessional conduct. The circumstances are as follows:

16 i. On October 29, 2006, Respondent was acting in a bizarre manner while passing
17 out medications. Respondent was taken to Little Company of Mary Hospital Emergency Room
18 and was voluntarily admitted to the Psychiatric Unit for evaluation. Respondent's Director of
19 Nursing stated she was present when the psychiatrist told Respondent he had "a strong suspicion
20 that she has Bipolar Disorder." The psychiatrist wanted Respondent to take psychiatric
21 medications, which Respondent refused. Respondent signed herself out of the hospital. The
22 Director of Nursing indicated that the hospital sent information to Respondent regarding a
23 medical leave of absence. The Director of Nursing detailed subsequent contact/communications
24 between herself and Respondent, and other Del Amo Hospital personnel, with the last contact
25 occurring on November 21, 2006. On this day, Respondent denied any memory of her actions on
26 October 29, 2006 or of being hospitalized, and wanted to know why she was placed on medical
27 leave.

28 ///

ii. On or about January 30, 2009, Respondent called the Division of Investigation, and spoke with Supervising Investigator Valerie Tate ("Investigator Tate"). Respondent stated that she opened a letter that was sent by Senior Investigator Autumn Holmes ("Investigator Holmes") to Irene Wojek ("Wojek"), a Registered Nurse. Investigator Tate asked Respondent why she opened a letter that was addressed to Wojek. Respondent stated that she opened the letter because it came to her residence address. Investigator Tate stated that Respondent sounded bizarre and irrational.

iii. On or about March 23, 2009, Investigator Holmès received a voice mail from Respondent's telephone number. Respondent stated that she is Irene Wojek.

b. Respondent is subject to disciplinary action under section 821, for failure to submit to a psychiatric examination as Ordered by the Board. The facts and circumstances surrounding Respondent's non-compliance with the Board's Order are as follows:

i. In *The Matter of the Petition to Compel Psychiatric Examination Against Dana Kay McDowell*, Board Case No. PT-2006-1016, the Board ordered Respondent to submit to a psychiatric examination within thirty (30) days of its Order dated May 25, 2010. A copy of the Order Compelling Psychiatric Evaluation is attached as exhibit C, and is incorporated herein by reference.

ii. Respondent did not submit to a psychiatric examination as required by the Board's properly served Order.

ORDER

IT IS SO ORDERED that Psychiatric Technician License No. PT 28252, heretofore issued to Respondent Dana Kay McDowell, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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This Decision shall become effective on May 26, 2011.

It is so ORDERED April 26, 2011



FOR THE BOARD OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS

60585633.DOC
DOJ Matter ID:LA2009602992

- Attachments:
Exhibit A: Accusation
Exhibit B: A copy of the Domestic Return Receipt
Exhibit C: A copy of Order Compelling Psychiatric Evaluation

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
2 Attorney General of California
3 GLORIA A. BARRIOS
4 Supervising Deputy Attorney General
5 MICHAEL BROWN
6 Deputy Attorney General
7 State Bar No. 231237
8 300 So. Spring Street, Suite 1702
9 Los Angeles, CA 90013
10 Telephone: (213) 897-2095
11 Facsimile: (213) 897-2804
12 *Attorneys for Complainant*

FILED

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Board of Vocational Nursing
and Psychiatric Technicians

13 **BEFORE THE**
14 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
15 **DEPARTMENT OF CONSUMER AFFAIRS**
16 **STATE OF CALIFORNIA**

17 In the Matter of the Accusation Against:

Case No. PT 2006-1016

18 **DANA KAY MCDOWELL**
19 **1123 W. Santa Ana**
20 **Fresno, CA 93705**
21 **Psychiatric Technician License No. PT**
22 **28252**

A C C U S A T I O N

Respondent.

23 Complainant alleges:

24 **PARTIES**

25 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
26 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
27 Technicians, Department of Consumer Affairs.

28 2. On or about August 25, 1992, the Board of Vocational Nursing and Psychiatric
Technicians issued Psychiatric Technician License Number PT 28252 to Dana Kay McDowell
(Respondent). The Psychiatric Technician License was in full force and effect at all times
relevant to the charges brought herein and expired on October 31, 2009.

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9. Section 822 of the Code states:

“If a licensing agency determines that its licensee’s ability to practice his or her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

11. Respondent is subject to disciplinary action under section 4521 subdivision (a), for unprofessional conduct. The circumstances are as follows:

12. On October 29, 2006, Respondent was acting in a bizarre manner while passing out medications. Respondent was taken to Little Company of Mary Hospital Emergency Room and was voluntarily admitted to the Psychiatric Unit for evaluation. Respondent's Director of Nursing stated she was present when the psychiatrist told Respondent he had "a strong suspicion that she has Bipolar Disorder." The psychiatrist wanted Respondent to take psychiatric medications, which Respondent refused. Respondent signed herself out of the hospital. The Director of Nursing indicated that the hospital sent information to Respondent regarding a medical leave of absence. The Director of Nursing detailed subsequent contact/communications between herself and Respondent, and other Del Amo Hospital personnel, with the last contact

1 occurring on November 21, 2006. On this day, Respondent denied any memory of her actions on
2 October 29, 2006 or of being hospitalized, and wanted to know why she was placed on medical
3 leave.

4 13. On or about January 30, 2009, Respondent called the Division of Investigation, and
5 spoke with Supervising Investigator Valerie Tate ("Investigator Tate"). Respondent stated that
6 she opened a letter that was sent by Senior Investigator Autumn Holmes ("Investigator Holmes")
7 to Irene Wojek ("Wojek"), a Registered Nurse. Investigator Tate asked Respondent why she
8 opened a letter that was addressed to Wojek. Respondent stated that she opened the letter because
9 it came to her residence address. Investigator Tate stated that Respondent sounded bizarre and
10 irrational.

11 14. On or about March 23, 2009, Investigator Holmes received a voice mail from
12 Respondent's telephone number. Respondent stated that she is Irene Wojek.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Failure to Appear for Psychiatric Examination)

15 15. Respondent is subject to disciplinary action under section 821, for failure to submit to
16 a psychiatric examination as Ordered by the Board. The facts and circumstances surrounding
17 Respondent's non-compliance with the Board's Order are as follows:

18 16. In *The Matter of the Petition to Compel Psychiatric Examination Against Dana Kay*
19 *McDowell*, Board Case No. PT-2006-1016, the Board ordered Respondent to submit to a
20 psychiatric examination within thirty (30) days of its Order dated May 25, 2010.

21 17. Respondent did not submit to a psychiatric examination as required by the Board's
22 properly served Order.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
26 issue a decision:

27 1. Revoking or suspending Psychiatric Technician License Number PT 28252, issued to
28 Dana Kay McDowell;

1 2. Ordering Dana Kay McDowell to pay the Board of Vocational Nursing and
2 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
5

6
7 DATED: November 5, 2010.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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